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[ORIGINAL CIVIL JURISDICTION]
GERAHTY, J.
April 26, 1934.

TAN JOO HERN and anor. ..... Plaintiffs.
vs.
THE SZE HAI TONG BANKING & INSURANCE Co., LTD., and ors. ..... Defendants.

[SINGAPORE SUIT No. 36 of 1933]

Trustees—Power to carry on business and to mortgage Testator's Estate—Postponement of Conversion—Nature of Beneficiaries' Interests Before Distribution—Construction of Will.

The extent of the powers of a trustee under a will can only be determined by reference to the will read as a whole.

A testator by his will gave his real and personal property to trustees upon trust for sale and conversion and subject to the payment of his debts, funeral and testamentary expenses and legacies, to partition the same at the expiration of a certain period (called in the will "the date of distribution") among his sons in equal shares; and until such partition was actually carried out, to collect, accumulate and invest the surplus income after payment of certain outgoings and allowances. The trustees were given absolute discretionary powers to postpone the sale and conversion, to carry on the testator's business and to invest any part of the trust estate therein.

The trustees carried on the testator's business and after the period called in the will "the date of distribution" but before any partition had taken place, mortgaged part of the trust property for the purposes of the business. The plaintiffs were 2 infant sons of the testator entitled to share on the partition of his estate.

Held, that on the true construction of the will, the powers conferred upon the trustees to postpone conversion and to carry on business and to invest therein any part of the testator's estate were expressly inserted to enable the trustees to carry on the business and to develop it until such time as division by partition could be given practical effect to and not merely until the time appointed for such partition and the mortgages effected by the trustees were valid.

Held also, that the express power to invest any part of the estate in the business includes the power to mortgage or charge any part of the trust estate for the purpose of the business.

Held also, that before partition the plaintiffs could not maintain any claim to a right or title to specific assets of the estate.

Trial of an action before Geraghty, J.

The plaintiffs were two infant sons of Tan Guan Hak deceased and beneficiaries under his will. The 1st defendant bank was the mortgagee of certain parts of the testator's estate and the 2nd and 3rd defendants were the trustees of the will and mortagagors of the property. The claim in this suit was, *inter alia*, for a declaration that the mortgages of the estate property were made by the 2nd and 3rd defendants without authority and for an order to set aside the same. The material circumstances which gave rise to this action and the relevant clauses of the will upon which the parties based their contentions appear sufficiently from the Judgment below.

E. A. Stevens for Plaintiffs. If facts proved as pleaded viz. the sons named in clause 8 of Will Tan Joo Kang, Nam, Seah and Siang had married or attained 21 years on the day following the date of death of Testator, then date of distribution had arisen on such day. On true construction of the Will therefore the power to postpone conversion was inoperative save for the usual executorial period allowed for winding up estate to best advantage. It follows that the power to carry on Testator's business was inoperative. The Trustees carried on the business therefore in breach of trust. The mortgage in favour of 1st Defendants is voidable at the instance of infant Plaintiffs. The money so raised by the Trustees and employed in the business was in breach of trust.

In re Crowther, Midgley v. *Crowther*, (1895) 2 Ch. 56.

In re Smith, Arnold v. *Smith*, (1896) 1 Ch. 171.

In re Ball, Jones v. *Jones*, (1930) W. N. 111.

Administration of Estates Act 1925 giving statutory power of postponement does not run in this Colony. Ordinance No. 144 (Trustees) gives the Statutory Law applicable at date of mortgage no power to mortgage in that ordinance in protection of Defendant mortgagees, Ordinance No. 14 of 1929 Sec. 18 (1) does not apply and the section is not retrospective.

Trustees joined as 2nd and 3rd Defendants because they were implicated in breaches of trust.

No other parties at this juncture necessary.

Suit 143 of 1933 instituted by present Plaintiffs against present 2nd and 3rd Defendants the Trustees for general administration in which judgment has already been entered against the Trustees will provide the necessary machinery for adjustment of rights *inter se* as between all parties interested.

Only necessary now to decide the issues (a) on the facts—whether the four named sons had married or attained age on the day after death of Testator and (b) in law on the construction of the Will.

Roland Braddell (with him *John Laycock*) for the 1st Defendants. Assuming that the mortgage was *ultra vires* the trustees, these plaintiffs are not entitled to sue under the circumstances of the case.

Until the estate has been fully administered no beneficiary has property in any specific investment, *Ewe Keok Neoh* v. *Ng Aun Thye*, 3 Mal: L.J. 23, *Lord Sudely* v. *A.G.*, L.R. (1897) A.C. 11, *Barnardo's Homes* v. *Income Tax Commissioners*, L.R. (1921) 2 A.C. 1. The circumstances under which a *cestui que trust* can sue are shown in *Halsbury's Laws of England* XXVIII pp. 172, 173, *Godefroi on Trusts*, 5th edition, p. 544, *Sharpe* v. *San Paulo Ry:*, L.R. 8 Ch: 597 at 609, 610, *Benjafield* v. *Baxter*, L.R. 12 A.C. 167. The Court could make no decree in the present action unless it could also make a decree for general administration: but such an order has already been made in an action based upon the same facts as those alleged in the present and to which action the Bank was not a party. The result of the plaintiffs' procedure is that the bank is seriously prejudiced. Various *cestuis que trustent* are proved to have joined in the alleged breach of trust and even the plaintiffs themselves are proved to have benefited by it since they have been educated and maintained on its proceeds. As the action stands at present it should be dismissed as not maintainable by the plaintiffs.

But the mortgage was not *ultra vires*. If the power in clause 10 of the will was operative the mortgage was good, see the Trustees Ordinance 1929 ss. 18 and 19, *re Dimmock*, 52 L.T. 494.

The power was operative. In the first place, powers do not necessarily and when interests in the will are absolutely vested in persons *sui juris*, and *a fortiori* when some are still infants. *In re Jump*, L.R. (1903) 1 Ch: 129, *In re Cotton's Trusts*, L.R. 19 C.D. 624, *Peters* v. *Lewes*, L.R. 18 C.D. 429. These cases show the necessity for a close examination of the wording of the will. Looking at this will it is clear that the so-called date of distribution was not the actual date of partition and that until the latter date was reached the power to mortgage remained operative: see particularly clauses 8, 9 and 12. The mortgage was accordingly a good one and *intra vires* the trustees.

E. A. Stevens in reply. Evidence led was virtually admitted by Defendants. I am entitled to a finding on facts that the 4 sons named had all married or attained age on the day after death of Testator.

These plaintiffs are not claiming any specific property in the subject matter of suit.

If successful estate will continue to be wound up in the administration action having regard to the judgment in this suit. First Defendant (mortgagee) is not prejudiced by lack of parties. If beneficiaries are alleged or admitted to have participated in the breach of trust the 1st Defendant (mortgagee) can apply in the administration suit to be made a party and have issues tried affecting interests of all parties interested.

Clause 8 of the Will was capable of operation. The partition directed could have been effected under a scheme approved by the Court and infants' interests protected.

The Court instead of partition might have directed a sale and a fund appropriated to provide for allowances to wives. All the authorities insist that a direction to carry on a business must be explicit. Here the direction was subservient to the provision fixing the date of distribution.

Cur. Ad. Vult.

GERAHTY, J.—This is a claim by two infant beneficiaries under the Will of Tan Guan Hek deceased by Teo Geck Boey their mother and next friend against.

1. The Sze Hai Tong Banking and Insurance Co., Ltd.

2. Tan Joo Kang, 3. Tan Joo Nam the executors and trustees of the estate of Tan Guan Hek deceased, for

(1) a declaration that an indenture of mortgage and indenture of further charge made by the 2nd and 3rd defendants to the first defendants were made without authority and that the first defendants have no valid title to the land thereby charged to them as against the plaintiffs and/or as against the estate of the testator

(2)) That the indentures of mortgage and further charge may be both set aside and cancelled and delivered up to the plaintiffs and that all entries relating thereto in the Register and/or Index kept at the Registry of Deeds Singapore may be cancelled or amended;

(3) An inquiry as to the amount paid to the first defendants out of the funds of the estate of Tan Guan Hek deceased in respect of the said indentures respectively;

(4) Repayment of monies so found to have been paid or spent;

(5) Such further and other relief as the nature of the case my require.

The plaintiffs contend that in breach of the provisions of the Will of Tan Guan Hek deceased (in this judgment referred to as "the testator") the second and third defendants (hereinafter referred to as "the trustees") have from the date of the testator's death carried on the testator's business under the name of Chop Kwong Siew Chiang (in this judgment referred to as "the business") until the 11th February, 1933, when the stock-in-trade and furniture were seized by the Sheriff under a Writ of Seizure and Sale

issued in Suit No. 79 of 1933 in this Court; further that the trustees in breach of trust and without any title or authority mortgaged the immoveable property, i.e. the four houses in which the business was carried on and which form part of the testator's trust estate, to the first defendants to the extent of $45,000 for the express purpose of securing an account with the first defendants kept, carried on and overdrawn for the purpose of the business.

Also if and in so far as the same is material, the first defendants well knew or could and should have known that the trustees in making the mortgages referred to were acting without title and authority and in breach of the trusts and contrary to the provisions of the Will.

The trustees have not filed a defence. The first defendants (hereinafter referred to as "the defendants") have filed a defence in which, *inter alia*, they admit that the trustees carried on the business until the 11th February 1933, but they deny that this was in breach of the provisions of the Will.

They admit the making of the mortgage and further charge but deny that this was in breach of trust and/or without any title or authority.

The defendants contend that by his Will the testator empowered the trustees to carry on the business for such period as in their absolute discretion they might think fit and in the course of the development of the business to invest therein any part of the estate of the testator without being liable to or responsible for any loss arising thereby. The defendants say that the investment of any part of the estate of the testator in the business was an investment which was expressly authorized by the Will.

It is contended that this suit is deficient for want of parties. Further that the trustees are not only executors and trustees of the testator's Will but are also beneficiaries in his estate and that Tan Joo Seah and Tan Joo Siang (two other sons of the testator) knew of and acquiesced in the carrying on of the business by the trustees.

The defendants also allege in regard to the claim that the estate of the testator has not yet been partitioned as directed by the Will and that the plaintiffs have no right or title to these specific assets, viz. the lands, and that the plaintiffs' only right is to have the trusts of the testator's Will carried into effect.

I propose firstly to outline the material facts which I find to have been duly proved or conceded in this action and then to set out the disputed clauses of the Will.

The Will is dated the 3rd October, 1918.

The testator died on the 8th May, 1926, leaving a widow in China, a widow in Singapore (Teo Geck Boey), six sons, three of whom were then minors, viz:

Tan Joo Siang, age 17

Tan Joo Hern (first plaintiff) 6 years

Tan Joo Choon (second plaintiff) 2 years, also six daughters the eldest of whom, Pek Ngim. was 15 years old and the youngest, Pek Siang, 1 year old.

Of the three major sons Tan Joo Seah was born in 1887 and married in 1904, Tan Joo Kang was born in 1897 and married in 1914, Tan Joo Nam was born in 1905 and married in 1922. Tan Joo Siang married on the 9th May, 1926, the day following his father's death.

Probate was granted to the trustees on the 25th May, 1926.

The trustees carried on the business until the 11th February, 1933.

The indenture of mortgage and the indenture of further charge were made on the 7th September, 1927, and the 18th September, 1929, respectively, the parties thereto acting on advice of their solicitors, and the proceeds thereof being utilized in the carrying on of the business.

The business, and the four houses in which it was carried on, were the sole assets of the testator and after his death the family were clothed, fed and educated from the proceeds of the business at the rate of $150 p.m.

The plaintiffs are two out of six beneficiaries —in addition to the trustees, who are also beneficiaries, Tan Joo Siang acquiesced in the carrying on of the business and assisted in it, while Tan Joo Seah, who was in China, was remitted funds for living expenses from the business and also rough accounts from time to time.

The writ of summons in this action was taken out on the 6th May, 1933, against the defendants. It was amended on the 4th July, 1933, to include the trustees.

The Statement of Claim was filed on the 2nd June, 1933, and amended on the 5th July, 1933, to include the trustees.

The defence is dated 20th June, 1933.

On the 18th February, 1933, the present plaintiffs issued a writ of summons in Suit 143 of 1933 against the trustees claiming

(1) To have the moveable and immoveable estate of the testator administered with the usual accounts, enquiries and directions on the footing of wilful default;
(2) To have a Receiver appointed of the testator's moveable and immoveable property;
(3) For the appointment of new trustees
(4) Such further and other relief as the nature of the case may require.

The Statement of Claim in that suit was filed on the 13th March, 1933.

No appearance was entered for the trustees.

On the 27th February, 1933, the British Malaya Trustee and Executor Co., Ltd. were appointed Receivers of the testator's moveable and immoveable property, and a bankruptcy petition having been presented against Chop Kwong Siew Chiang, they were appointed managers of the business until judgment or further order.

On the 6th May, 1933, i.e. two days after the institution of the present suit, judgment in that suit was entered in default and it was ordered, *inter alia*, that the following accounts and enquiries be taken and made by the Registrar:—

(1) An account of the moveable and immoveable property of the testator as from the date of his death on the footing of wilful default.

(2) An enquiry as to the dealing of the trustees with the monies raised by the mortgages, i.e. the mortgages referred to in the present suit.

(3) An account of all sums paid by way of interest on such mortgages,

and the appointment of the British Malaya Trustee and Executor Co., Ltd. as Receivers and Managers was confirmed.

On the 3rd March, 1933, a Receiving Order was made against the business.

On the 9th June, 1933, a Receiving Order and Order of Adjudication were made against Tan Joo Nam (third defendant) and on the same date similar orders were made against Tan Joo Kang (second defendant).

I will now set out the disputed clauses of the Will:

"8. I devise and bequeath unto my trustees all my real and personal property whatsoever and wheresoever including the business carried on by me under the name of Chop Kwong Siew Chiang other than property in China not hereby or by any Codicil hereto otherwise specifically disposed of and any fund or property over which I may have any general power of appointment or disposition (all of which is hereinafter called my Trust Estate) Upon Trust to sell call in and convert the same into money and after payment out of the money arising thereby or out of any ready money of my debts funeral and testamentary expenses and legacies To Hold the residue thereof upon the trusts following namely when all my sons Tan Joo Kang, Tan Joo Nam, Tan Joo Seah and Tan Joo Siang have married or attained the age of twenty-one years whichever shall first happen and which period is hereinafter referred to as the date of distribution to partition the investments for the time being representing my Trust estate and subject to the provisions hereinafter contained as to allowances to my wives amongst my four sons Tan Joo Kang, Tan Joo Nam, Tan Joo Seah and Tan Joo Siang and any other son or sons who may hereafter be born to me in equal shares and unless such partition is approved by all my sons I direct that they shall draw lots for such shares and in the meantime to collect and get in the income and profits thereof and after paying all necessary expenses thereout including assessments rates taxes repairs and other proper outgoings to apply the residue thereof in the payment of

(a) The sum of Dollars Thirty ($30) monthy to each of my wives Lim Lang Hean and Teo Geck Boey during their respective lives or until such time when either or both of them shall remarry when the said allowance in respect of the wife so remarrying shall cease on such remarriage.

(b) The sum of Dollars Five ($5) per month to each of my daughters until she shall marry or attain the age of twenty-one years whichever shall first happen.

(c) To apply such additional sum as shall be necessary for the maintenance of my family and for the suitable education of my children.

(d) To accumulate the residue (if any) of the said income and profits and invest the same as hereinafter mentioned.

"9. If any son or sons of mine shall have died before the date of distribution leaving any son or sons living at such date such son or sons shall stand in the place of such deceased son or sons of mine and take *per stirpes* and equally between them if more than one the share which would have passed to such deceased son or sons if he or they had lived to attain a vested interest but in case any son or sons of mine shall have died before the date of distribution leaving no son or sons living at such date but an adopted son or sons such adopted son or sons shall stand in the place of such deceased son or sons and take *per stirpes* and equally between them if more than one the share which would have passed to such deceased son or sons if he or they had lived to attain a vested interest But if any son of mine shall

die leaving no son or adopted son living at the date of distribution the share of the son so dying shall go to my other sons and if any such other sons shall have died leaving a son or sons or adopted son or sons as the case may be such son or sons or adopted son or sons shall take *per stirpes* if more than one and equally between them the share which such son so dying would have taken had he lived until the date of distribution And I declare that my Trustees may postpone the sale calling in and conversion of any part of my Trust Estate for such period as they may in their absolute discretion deem fit notwithstanding that it may be of a wasting speculative or reversionary nature and that pending such sale calling in and conversion the whole of the income or property actually producing income shall be applied as from my death as income and on the other hand on such sale calling in and conversion or on the calling in of any reversionary property no part of the proceeds of such sale calling in and conversion or of such property shall be paid or applied as past income.

"10. I empower my Trustees to carry on my business of Chop Kwong Siew Chiang now carried on by me at Nos. 48-2 and 48-3 Kling Street, Singapore, for such period as in their absolute discretion they may think fit and in the course of the development of the said business to invest therein any part of my estate and without being liable or responsible for any loss arising thereby and in case the same shall at any time be carried on at a loss I declare that my Trustees shall be reimbursed any loss incurred by them in carrying on the same out of my general estate and effects.

"12. Provided Always and I declare that in case any person to whom a share in the said Trust Estate is hereinbefore given shall at any time before the same becomes absolutely vested in such person alienate or charge or attempt to alienate or charge the same or the income thereof or of any part thereof or in case (before the same becomes absolutely vested as aforesaid) by reason of any act or event or his bankruptcy or any other event the said share or the income thereof or of any part thereof shall or but for this proviso become vested in or charged in favour of some other person or persons or a corporation then the trust hereinbefore contained in favour of such person as aforesaid shall immediately thereupon cease and determine and my said will shall be read and construed and take effect in all respects as though such person had died on the day preceding the date of distribution."

There arise for consideration and determination two main issues in this suit:—

I. (a) Had the trustees power under the Will to carry on the business as they did?

(b) Had they authority under the Will to make the indenture of mortgage of the 7th September, 1927, and the indenture of further charge of the 18th September, 1929?

II. If the answers on I (a) and (b) are in the negative, are the plaintiffs entitled to relief in this suit as framed?

I will now consider the first of these issues, indicating briefly the arguments of counsel as I have understood them.

It is contended for the plaintiffs that the power to postpone conversion and likewise to carry on the business and invest therein any part of the estate lasted only up to the date of distribution, which it is argued had arrived when all the four named sons were married or had attained the age of 21 years, that is, on the 9th May, 1926, when Tan Joo Siang the youngest named son married on the day following his father's death; or within a reasonable time thereafter.

Further that the power to postpone is subservient to the main purposes of the Will which contemplates division by partition immediately after the date of distribution has arrived and that consequently the mortgage and further charge were made by the trustees without power and authority.

The following authorities were cited in support of these contentions:—

Fisher & Lightwood's Law of Mortgage, 7th Edition.

p. 172—Power of Trustees to mortgage.

179—When mortgage by executor is invalid.

130—Effect of unauthorized security.

Williams on Executors, 12th Ed.

Vol. I, p. 561, 562.—Common law power to mortgage.

Vol. II, p. 1171—Power to carry on business

Lewin on Trusts, 13th Ed.

p. 348—Power to postpone sale.

In re Crowther, Midgley v. *Crowther*, (1885) 2 Ch. 56 and at p. 59 *per* Chitty, J.

In re Smith, Arnold v. *Smith,* (1896) 1 Ch. 171.

In re Ball, Jones v. *Jones,* (1930) W.N. 111.

Ordinance No. 144 (Trustees). No statutory power to mortgage, and said to be applicable to this case. But see the Trustees Ordinance No. 14 of 1929 section 18(1) which appears to me to have retrospective effect. If the trustees were in fact authorized by the Will to raise money for the business, a point which remains to be determined, I am of opinion that the provisions of this section apply to them.

On the other hand, it is contended for the defendants that the Will contains authority to the trustees to carry on the business not limited to the period referred to as the date of distribution, a term used in this particular Will merely for purposes of definition and not as an operative part, but until the date on which the direction to divide by partition can be given effect to, namely, when all the sons can legally approve of partition or alternatively draw lots for their shares in accordance with the directions contained in clause 8 of the Will.

Further that so long as the power to carry on the business continues there is power to mortgage.

In support of these contentions the following authorities have been cited:

Halsbury's Laws of England,—Vol. 14, p. 294, par. 680.

Vol. 28, p. 655, par. 1263.

Vol. 21, p. 810, par. 1512—Definition of Partition.

Williams on Executors, 12th Ed. Vol. 1, 586.

Lewin on Trusts, pp. 348 & 349.

Re Dimmock, 52 L.T. 494.

It is argued that the questions in dispute can only be decided by construing the Will as a whole and in ascertaining the intention of the testator. See *Halsbury,* Vol. 28, pp. 651, 659, 663. *In re Jump,* 1903, 1 Ch. 129 at p. 132 *per* Swinfen Eady, J. *In re Cotton's Trusts,* L.R. 19 Ch. D. 624. *Peters* v. *Lewes & East Grinstead Rly. Co.,* L.R. 18 Ch. D. 429 *per* Jessel, M.R. at p. 434.

I agree with this contention and accordingly I will now give my decision on the first issue raised on what I conceive to be the reasonable and true construction to be placed upon the Will, the framing of which presents certain unusual features, arising no doubt from the difficulty of formulating in terms of English legal phraseology the intention of a Chinese testator.

The first factor which I will take into consideration is that the testator made his Will nearly eight years before his death, that is to say, before the birth of the two plaintiffs. By clause 8 of his Will, after bequeathing his property, including the business, to the trustees upon trust to convert the same, the testator specifically names and makes provision out of residue for all his four sons then living. He goes on, however, to include in that provision any other son or sons who may thereafter be born to him.

It seems to me that at the date of making his Will it was the testator's clear intention ultimately to benefit in equal shares, by way of partition of his trust estate, his sons then living and any sons who might afterwards be born to him, and pending such partition, to make provision for his daughters pending their marriage or coming of age and for the maintenance and education of his children.

If the Will is to be read as contended by the plaintiffs, and having regard to the fact that the sole assets were his business and the four houses in which that business was carried on, it seems to me that the testator's intentions would be frustrated, for, if, as it is argued, there is no provision in the Will to postpone sale after the marriage of the youngest named son, which we know took place one day after the testator's death, it would result in the following consequences. The infant plaintiffs would not have been in a position to comply with the subsequent directions of clause 8 that is, to approve of the partition or alternatively to draw lots, and the sole means of giving effect to the directions contained in paras (b) and (c) of the same clause would disappear, thus the provision which the testator has sought to make for the maintenance and suitable education of his children would become nugatory.

I think that I am not unduly straining the language of the Will in holding that the powers conferred upon the trustees by clause 9 to postpone conversion and by clause 10 to carry on the business and to invest therein any part of the testator's estate, were expressly inserted to enable the trustees to carry on the business and to develop it until such time as division by partition could be given practical effect to, and to obviate the position which might otherwise, and did in fact, arise.

Support is lent to this view by the phraseology employed in clause 12 which speaks of a period before a share in the trust estate becomes *absolutely* vested in a person to whom it has been given.

To sum up, I consider the true construction to be placed upon the provisions of the Will as a whole is that the testator contemplated a period, the duration of which was necessarily unknown to him at the date of making his Will, between the nominal date of distribution and the actual time of division by partition when the shares in the trust estate would absolutely vest in his sons. Hence to cover this period the

testator by clauses 9 and 10 expressly empowered the trustees to postpone sale and to carry on the business "for such period as in their absolute discretion they may think fit" and for that purpose to invest in the business any part of his estate.

On this construction the answers to questions (a) and (b) on the first issue are in the affirmative, for in regard to (b) I hold that the express power to invest any part of the estate in the business includes the power to make the mortgages in question. See *Re Dimmock*: *Dimmock* v. *Dimmock*, 52 L.T. 494, *per* Kay J. at pp. 496 & 497.

This disposes of the case on its merits, for it follows that the plaintiffs' claim must fail and the suit be dismissed, but I do not wish to leave an impression in the minds of the parties, by confining my decision to the substantial point in issue, that I have rejected the contentions of the defendants' counsel on the second issue. Far from it. Had I come to a different conclusion on the merits I consider it only right to add that I take the view that as this suit is now framed and presented to the Court, the plaintiffs would not be entitled to a decree as prayed, or indeed to relief in a modified form; further I am at a loss to see how any amendment at this stage could be effectual and not involve fresh pleadings and a consideration of the case *de novo*.

I reserve the question of costs for further consideration.

Judgment accordingly.

Roland Braddell for the first defendants pointed out that the value of the subject matter of the claim in this suit was in the neighbourhood of $100,000.00 and that complicated questions of law were involved and applied for a certificate for two Counsel and for costs to be awarded against the next friend of the infant plaintiffs. He referred to *In Re Picton*, (1931) W.N. 254 and *Coote* on Mortgages (9th Edn.) Vol. II. pp. 1196 and 1197.

Gerahty, J. made the following supplementary order: "Suit dismissed with costs against the next friend without prejudice to the first defendant's right to charge their costs against the mortgaged property and without prejudice to the right, if any, of the next friend to an indemnity. Certificate for two Counsel allowed."

Solicitors for the Plaintiffs—

Allen & Gledhill.

Solicitors for the 1st Defendants—

Braddell Bros.

[APPELLATE CIVIL JURISDICTION]

HUGGARD, C.J., THORNE and GERAHTY, JJ.

March 1, 1934.

SAVENA SUPRAMANIAM PILLAY (Plaintiff) Appellant

vs.

TAN KAH CHIAT administrator of TAN KONG LIANG deceased .....(Defendant) Respondent

[SINGAPORE CIVIL APPEAL No 14 of 1933]

Practice—Form of Judgment against Administrator—General Judgment and Judgment de bonis testatoris—*Jurisdiction to amend Judgment when passed and entered—Civil Procedure Code, section 309.*

When an action is brought against an administrator and Judgment is entered against the Defendant *simpliciter*, this is a judgment *de bonis propriis* and does not entitle the Judgment Creditor to obtain satisfaction out of the assets of the deceased.

Once a judgment has been passed and entered the Court has no jurisdiction to amend it under the "slip order" section (section 309 of the Civil Procedure Code) unless there has been an accidental slip in drawing up the judgment, or unless the judgment as drawn up does not correctly state what the Court actually decided and intended. When a Plaintiff who sues a Defendant as administrator has entered up a default judgment against him *simpliciter*, the Court has no jurisdiction by means of a "slip order" to amend this to a form of judgment *de bonis testatoris*.

APPEAL from an order of the Judge made on an adjourned Summons in Chambers.

In this action the Plaintiff was a creditor who took proceedings against Tan Kah Chiat as the administrator of Tan Kong Liang deceased and in such proceedings Charles Clement Dunman was appointed to be Receiver by way of equitable execution of (*inter alia*) all the estate of Tan Kong Liang deceased. The date of the order appointing the Receiver was the 11th July, 1919 and by that order it was directed *inter alia* that the said Receiver should pay (*inter alia*) "All judgment and other debts due by the estate of Tan Kong Liang deceased including costs where costs are payable."

Subsequently in 1921 one Mutiah Chetty also commenced an action against the Defendant being Suit No. 709 of 1921 entitled "Between M. Mutiah Pillay, Plaintiff and Tan Kah Chiat Administrator of the estate and effects of Tan Kong Liang deceased, Defendant." The endorsement on the writ of summons also stated that the Defendant was sued as the administrator of Tan Kong Liang deceased. The writ was specially endorsed and the Statement of Claim set out the cause of action as being a claim on a promisory note made by the Defendant in favour of the Plaintiff. Tan Kah Chiat did not enter appearance and on the 31st May, 1921 the Plaintiff M. Mutiah Pillay